

APPLICANT: James F. Allsup
SERIAL NO.: 09/629,323
FILED: July 31, 2000
EXAMINER: Alexander Kalinowski
DOCKET NO.: 7554
GROUP ART UNIT: 3626
FOR: Long Term Disability Overpayment Recovery Service With Post Award Service and Savings Program and Financial Assistance

Supplemental Affidavit of James F. Allsup Under 37 C.F.R. §1.132

James F. Allsup, being duly sworn, does hereby depose and say as follows:

1. I am the inventor of the Long Term Disability Overpayment Recovery Service With Post Award Service and Savings Program and Financial Assistance described and claimed in application Serial No. 09/629,323 filed July 31, 2000. I own all rights, title and interest in the application and invention and have not assigned any rights to another party.

2. I am the founder, owner and Chief Executive Officer of Allsup, Inc. Allsup, Inc. ("Allsup") is the exclusive user of the Long Term Disability Overpayment Recovery Service With Post Award Service and Savings Program and Financial Assistance described and claimed in application Serial No. 09/629,323.

3. I previously submitted the Affidavit of James F. Allsup Under 37 C.F.R. §132 in this case. I will refer to that Affidavit as my first Affidavit. This is a supplemental affidavit to address issues raised by the Examiner in the office action dated December 5, 2003 and to update the data that shows the

overwhelming commercial success of the method that is the subject matter of my patent application and to introduce additional declarations in support of my patent application.

4. Based upon my background and experience, which I set out in greater detail in my first Affidavit, I consider myself to be one skilled in the art to which my invention pertains.

5. As I set out in Paragraphs 5 and 6 of my first Affidavit, initially Allsup's services focused primarily on Long-Term Disability ("LTD") insurance carriers and self-insured employers who insured or extended LTD benefits to employees, and I was aware, generally, that most LTD benefit plans allow the plan to reduce the amount of LTD benefits paid to a disabled individual, by the amount of SSDI the individual receives. However, as my experience with these entities, their plans and referred individuals developed, I also became aware that not only did the terms of the LTD benefit plans typically allow for the reduction of the ongoing LTD benefit, they also required the repayment of past LTD benefits when SSDI was awarded by SSA retroactively.

6. Initially, my company began to provide reminders to the individual that if and when SSDI was awarded, the individual would be obligated to repay any overpayment to the LTD carrier or self-insured employer. Subsequently, in approximately 1986, Allsup included this information both verbally and in writing.

7. Allsup's involvement was limited to informing the individual that the LTD carrier or self-insured employer would contact the individual directly and would provide them with the exact amount to be repaid. We also would inform

the LTD carrier or self-insured employer of the award, the date the individual became entitled to SSDI benefits and of the specific SSDI benefit amount, so that the LTD carrier or self-insured employer could calculate the overpayment amount and proceed with its own recovery efforts from the individual.

8. As I set out in Paragraph 8 of my first Affidavit, this type of recovery effort amounted to a “back-end” approach by the LTD carrier or self-insured employer to recovering overpayments (i.e., the principal efforts and actions to recover the overpayment occurred only after the award of SSDI and the payment of retroactive benefits, and was conducted primarily by the LTD carrier or self-insured employer).

9. This “back-end” approach had significant drawbacks that resulted in limited success in recovering overpayments. Most notably, as I described in Paragraph 11 of my first Affidavit, this type of “back-end” approach allowed the disabled individual to take “mental ownership” of the retroactive payment and the individual was reluctant to disgorge the overpayment, or the individual would spend the money.

10. Beginning in approximately 1991, Allsup employed an actual overpayment recovery service, as set out in paragraph 14 of my first Affidavit. This service is a “manual” process for expediting overpayment recovery. This “manual” system is the subject matter of the cited reference *Allsup Inc.’s Overpayment Recovery Service* that was used by my company in approximately 1995-1996.

11. In summary, and as set out in our brochure, the individual was informed of their repayment obligation. The LTD carrier or employer notified Allsup of the overpayment amount and Allsup notified the individual. The individual then signed a check payable to the LTD carrier or employer for the overpayment amount and sent it to Allsup. Allsup in turn forwarded the payment on to the LTD carrier or self-insured employer. This process is addressed in more detail in Paragraph 15 of my first Affidavit.

12. Although the "manual" process was an improvement over the "back-end" system, it still suffered from the major drawback of allowing the claimant to get possession of the overpayment and spend it or refuse to issue the check.

13. Because our own brochure disclosed a system that I was trying to replace, it certainly does not render obvious my claimed invention. That system did not, and could not, suggest the specific critical steps of obtaining preauthorization from the disabled individual for a direct recovery of the overpaid benefits from a deposit account, after a direct deposit of an SSDI award into the deposit account, establishing the direct deposit of an SSDI benefit into the deposit account by the SSA, or electronically recovering from the deposit account a preauthorized, predetermined amount of long-term disability benefits, immediately after the deposit of SSDI by SSA and the disabled individual's receipt of SSDI payments.

14. As I set out in Paragraph 32 of my first Affidavit, my company did not implement a commercial embodiment of my new invention until 1999. The

processes of that invention were not obvious in view of our own brochure, and it continued to take me nearly four years after the publication of that particular brochure to develop a commercially successful electronic system of recovery.

15. Allsup still employs a “manual” version of overpayment recovery as a back up to the electronic system or for use in some limited cases, where the client company or the SSDI recipient opts out of the automated recovery system. However, due to the overwhelming success of the new system that is the subject matter of my patent, the old “manual” system has nearly been replaced, as set out in Paragraphs 25 to 27 and Paragraph 54, below.

16. I have reviewed the SSDC brochure cited by the Examiner in the December 5, 2003 office action. In my opinion, the information included in the SSDC (29 October 1993) reference cited by the Examiner does not pertain to an actual SSDC recovery service. The terms “Coordination of overpayment recoveries resulting from SSDIB awards” does not indicate to me what activity SSDC was engaged in.

17. The opinion I express in Paragraph 16, above, also is based upon the fact that, around the time I became aware of the SSDC brochure (circa 1993), I was well aware of the business activity of competitors in this industry. To the best of my knowledge, SSDC was not operating any structured overpayment recovery system.

18. As one skilled in the art, it is my opinion that the SSDC brochure does not teach or suggest my novel system. The language “Coordination of overpayment recoveries resulting from SSDIB awards” does not disclose any

method of "coordination" employed by SSDC; it does not even hint at a method of recovering overpayments. The only thing suggested by the SSDC brochure is that claimants are required to repay overpaid LTD benefits, a requirement of many standard LTD insurance policies.

19. With specific reference to my claimed invention, SSDC does not teach or suggest, in any manner, the specific novel steps of obtaining from the disabled individual preauthorization for direct recovery of the overpaid benefits from a deposit account, after a direct deposit of the SSDI award into the deposit account, establishing the direct deposit of an SSDI benefit by the SSA, or electronically recovering from the deposit account a preauthorized, predetermined amount of long-term disability benefits, immediately after the award of SSDI by SSA and the disabled individual's receipt of SSDI payments.

20. Over six years passed between the time I first became aware of the SSDC brochure and when we first commercialized my new invention. If SSDC had taught or suggested my new method, it would not have taken over six years to invent a commercial embodiment.

21. The Allsup brochure and the SSDC brochure do not teach or suggest my electronic or automated overpayment recovery system. I have reviewed Pollin's U.S. Patent No. 5,727,249 cited by the Examiner in the office action. As one skilled in the art, in general, and specifically as the inventor of the process claimed in the pending application, I would not have looked to this patent, or followed the teachings of this patent, or combined the teachings of this

patent with the limited disclosures in the Allsup and SSDC brochures, to address the problems associated with the "back-end" method or the "manual" method.

22. Overall, Pollin describes a method for generating and endorsing a check. The check is printed and endorsed by a debt collector upon authorization by the payer. Pollin does not solve the problems I was looking to solve, since it is just another way of generating a check and, therefore, no improvement over the "manual" system. In fact, Pollin is similar to the "back-end" method or "manual" overpayment recovery system in that it requires the payer to initiate payment by check or draft drawn on a funded account. As a result, the money is in the account and the payer has "mental ownership" of the funds and can spend the money on something else or refuse payment. Pollin certainly does not teach or suggest a system wherein the overpayment is recovered instantly upon deposit by the SSA before the claimant takes "mental ownership" of the overpaid funds.

23. The novel system of my invention continues to enjoy substantial commercial success, related directly to its ability to increase the overall amounts of recovered overpayments and reduce the time for recovery.

24. The following is a chart that supplements the chart set out in Paragraph 33 of my first Affidavit, showing the increase in recovery percentages and dollars recovered for all overpayment recovery service clients that we have experienced after commercial introduction of the process in November, 1999:

TOTAL OVERPAYMENT RECOVERY SERVICE
(Recovery Percentages)

Year	Number of Recoveries Attempted	Number of Recoveries Made	% of Number Recovered	Dollar Amount of Recoveries Attempted	Dollar Amount of Recoveries Made	% of Dollars Recovered
1999	324	269	83.02%	\$3,844,244	\$3,220,635	83.78%
2000	1334	1160	86.96%	\$16,389,430	\$13,774,984	84.05%
2001	1869	1694	90.64%	\$22,498,021	\$19,847,580	88.22%
2002	2634	2340	88.84%	\$33,954,246	\$28,983,975	85.35%
2003	3946	3387	85.83%	\$47,938,686	\$40,551,337	84.59%

25. The following chart supplements the chart of Paragraph 37 of my first Affidavit, and summarizes the decrease in the number of days until overpayment recovery after initiation of the overpayment recovery employing the system of the present invention:

OVERPAYMENT RECOVERY SERVICE
(Average Days to Recovery)

Year	Manual Method Clients		Electronic Method Clients		Weighted Average Days to Recovery
	Number of Recoveries Made	Average Days to Recovery	Number of Recoveries Made	Average Days to Recovery	
1999	197	23.1	72	9.7	19.5
2000	154	22.4	1006	9.6	11.3
2001	167	24.7	1527	6.8	8.6
2002	168	31.1	2172	11.4	12.8
2003	55	25.6	3332	14.6	14.8

26. One significant point illustrated by the chart of Paragraph 25 is that the number of recoveries made through the use of the old "manual" system has

decreased significantly. Due to its efficiencies and significant improvement in recoveries, the novel system is replacing the "manual" system to a significant extent.

27. The following chart supplements the chart set out in Paragraph 38 of my first Affidavit and shows a breakdown of the dollar amount of recoveries made, comparing the amounts collected when the represented individual repaid the overpaid amount directly (Manual Method Clients) vs. the new electronic overpayment recovery system (Electronic Method Clients).

Year	Dollar Amount Of Recoveries Made		
	Manual Method Clients	Electronic Method Clients	Total Dollar Amount of Recoveries Made
1999	\$2,271,215	\$949,420	\$3,220,635
2000	\$1,757,748	\$12,017,236	\$13,774,984
2001	\$2,074,304	\$17,773,276	\$19,847,580
2002	\$1,934,180	\$27,049,795	\$28,983,975
2003	\$674,249	\$39,877,088	\$40,551,337
Total	\$8,711,696	\$97,666,815	\$106,378,511

28. The chart in Paragraph 27 illustrates the tremendous commercial success my invention has met since its introduction. The total amount of recoveries made per year from 1999 to 2003 grew by over \$37 million. Approximately 92% of the total dollars recovered were for electronic overpayment recovery system clients. Only approximately 8% of the recoveries were made for manual method clients. This demonstrates the superiority of my

invention over prior methods and the replacement of prior methods by my new invention.

29. In my opinion, the continued commercial success of my electronic overpayment recovery service is primarily attributable to the fact that (a) direct deposit from SSA to a claimant account is established for the claimant; (b) the claimant signed preauthorization allows for electronic recovery of a predetermined overpayment amount from the designated account immediately after the direct deposit, but before the recipient takes "mental ownership" of the funds; (c) the service results in an increase in the amount of money recovered; (d) the service decreases the average days to recovery; and (e) the service increases LTD carrier or self-insured employer overpayment recovery rates.

30. Allsup is the only company authorized to use my overpayment recovery system. However, I believe that there now are at least three competitors who have tried to copy our system. It remains my opinion these competitors are copying my electronic overpayment recovery service because it is groundbreaking and has significantly changed the industry.

31. Attached to this Affidavit, as Exhibit A, is the Declaration of Mr. Jay Barriss, (referred to hereinafter as "Barriss Decl."). This declaration further supports the statements included in my Affidavits and Mr. Wolfson's Declarations, I will discuss below.

32. Mr. Barriss also is familiar with the long-term disability insurance industry and has worked in the industry for over 11 years. (Barriss Decl. ¶ 3). Mr. Barriss was employed by Aetna Life Insurance Company from December, 1998

to June, 2003. (Barriss Decl. ¶ 4). At Aetna, Mr. Barriss was involved in the preparation of financial statements, product pricing and reserve valuation. (Barriss Decl. ¶ 5). As a result of his job at Aetna, Mr. Barriss was aware of the necessity of recovering overpaid disability benefits from their insured. (Barriss Decl. ¶¶ 6). Mr. Barriss confirms the problems associated with recovery of overpayments that existed in the industry prior to the instant invention. (Barriss Decl. ¶ 7). Mr. Barriss confirms that there was a long-felt need in the industry for a process of recovering the overpaid amounts after the insured received the SSDI benefit but before the insured disposed of the money. (Barriss Decl. ¶¶ 7, 8 & 12).

33. Mr. Barriss became familiar with my invention in December, 1999 when Aetna retained Allsup to provide overpayment recovery services. (Barriss Decl. ¶ 9). Prior to that time, Mr. Barriss knew of no other such service available to the long-term disability insurance industry. (Barriss Decl. ¶ 9) With my system, Aetna realized an increase in dollar amounts collected and a decrease in the time from the award of the SSDI benefit to the recovery of the overpaid amount. (Barriss Decl. ¶ 10). In his opinion, my automated overpayment recovery system helped improve Aetna's ability to collect overpaid monies owed to them because it provides for pre-approved electronic recovery of the overpaid amount from a deposit account after the SSA deposits the benefit. (Barriss Decl. ¶ 11).

34. It is Mr. Barriss' opinion that my automated overpayment recovery system met a long felt need in the industry for increasing the amount of money recovered and decreasing the time of recovery. (Barriss Decl. ¶ 12).

35. Also attached to this Affidavit, as Exhibit B, is the Supplemental Declaration of Mr. Barry Wolfson (referred to hereinafter as "Supp. Wolfson Decl."), that further supports the statements included in Mr. Wolfson's first Declaration and also addresses his understanding of the SSDC brochure and SSDC's services.

36. Based upon his over 35 years of experience, Mr. Wolfson is familiar with all aspects of the long-term disability insurance industry. (Supp. Wolfson Decl. ¶ 4). Mr. Wolfson presently works as a consultant to the industry. (Supp. Wolfson Decl. ¶ 5) Mr. Wolfson was employed by Aetna from 1965 to the end of 2002. In 1983 Mr. Wolfson started Aetna's Social Security Advocacy Program, which hired skilled Social Security representatives to assist long-term disability claimants in obtaining Social Security Benefits. (Supp. Wolfson Decl. ¶ 6).

37. Mr. Wolfson has considerable expertise in the long term disability claims practice and recovery of long-term disability benefit overpayments. (Supp. Wolfson Decl. ¶ 7) Mr. Wolfson has reviewed the SSDC brochure cited by the Examiner and is familiar with SSDC and the services SSDC offered around 1993. (Supp. Wolfson Decl. ¶ 8). From the early 1990s until 2002 Aetna was the insurance carrier for the State of Michigan, providing long-term disability benefits and claims services. (Supp. Wolfson Decl. ¶ 9). At the same time, SSDC was retained by the State of Michigan to obtain benefits for its employees from the Social Security Administration. (Supp. Wolfson Decl. ¶ 10). Through his access to records and statistics, Mr. Wolfson was aware of the fact that the State of

Michigan had a significant problem with recovering overpaid benefits from the insured after an award of SSDI. (Supp. Wolfson Decl. ¶ 11).

38. Mr. Wolfson does not think SSDC was engaged in any system for recovering overpaid benefits. (Supp. Wolfson Decl. ¶ 12). It is Mr. Wolfson's belief that if SSDC had or knew of any type of method to recover overpaid disability benefits in the early 1990s it would have marketed that product to the State of Michigan in response to those significant problems. (Supp. Wolfson Decl. ¶ 13). Furthermore, it is Mr. Wolfson's opinion that if the SSDC brochure had indicated or suggested that such a service was available, one knowledgeable about LTD claim practices would have requested SSDC to develop such a program to respond to the needs of the State of Michigan. (Supp. Wolfson Decl. ¶13).

39. According to Mr. Wolfson, the SSDC brochure does not indicate or suggest to one who is knowledgeable about LTD practices, any method or system for recovering overpaid benefits and that the brochure certainly does not indicate that there is an electronic overpayment recovery service or any program that includes all the complex steps that were developed in my system. (Supp. Wolfson Decl. ¶14). According to Mr. Wolfson, as one familiar with and knowledgeable about LTD claim practices, the quote "Coordination of overpayment recoveries resulting from SSDIB awards" contained in the SSDC brochure does not suggest any method of recovering overpayments and, in fact, he finds the statement to be vague and unclear as to what the statement was

intended to mean or if SSDC was offering any service. (Supp. Wolfson Decl. ¶ 15).

40. To the best of his knowledge, SSDC's only participation in the recovery of overpayments was to emphasize to the claimant his or her obligation to repay the overpaid benefit to the carrier and SSDC took no active role in a recovery. Mr. Wolfson believes the statement "Coordination of overpayment recoveries resulting from SSDIB awards" refers to that limited activity. (Supp. Wolfson Decl. ¶ 16). Mr. Wolfson's statements confirm my own understanding, as set out in paragraph 9 of my first Affidavit.

41. Mr. Wolfson confirms that his assumptions about the meaning of the statement "Coordination of overpayment recoveries resulting from SSDIB awards" comes from his knowledge of SSDC business at the time because an objective reading of the brochure, by itself, teaches or suggests nothing substantive. (Supp. Wolfson Decl. ¶ 16).

42. Mr. Wolfson again confirms the problems associated with recovering overpaid benefits. While some overpaid benefits were entirely repaid, a significant number were only partially repaid or never repaid. (Supp. Wolfson Decl. ¶ 17). He again emphasized the need in the industry for a method of recovering overpaid amounts. (Supp. Wolfson Decl. ¶ 18).

43. Mr. Wolfson confirms that this need is still felt in the industry by those insurance carriers who have not subscribed to our method. For example, in 2002, Mr. Wolfson attended a meeting with the SSA along with nine or ten of the largest LTD carriers to address the industry-wide problem of non-recovered

overpaid benefits. Most of the participants at the meeting were not participating in the Allsup overpayment recovery program at the time. (Supp. Wolfson Decl. ¶ 19). I believe it is important to note that since the meeting with the SSA, several of the participants have subscribed to, or are seriously considering, our program. (Supp. Wolfson Decl. ¶ 20).

44. Mr. Wolfson points out, and I agree, the fact that the largest LTD carriers in the industry could not develop a satisfactory method of overpayment recovery on their own, points out the novelty and non-obviousness of my invention. (Supp. Wolfson Decl. ¶ 20).

45. It is Mr. Wolfson's opinion that if there was any indication in the SSDC brochure, or any other vendor's brochures or marketing materials, that such an automated overpayment recovery system existed, that system would have been developed before mine to meet the need for such overpayment recovery service in the industry. (Supp. Wolfson Decl. ¶ 21). Mr. Wolfson confirms that I was the first to develop a successful, automated overpayment recovery service that meets the needs of the industry. (Supp. Wolfson Decl. ¶ 22).

46. Also attached to this Affidavit, as Exhibit C, is the Declaration of Mr. Scott Ritchie (referred to hereinafter as "Ritchie Decl.") This declaration also supports the statements in my two affidavits, Mr. Barriss's declaration and Mr. Wolfson's two declarations.

47. Mr. Ritchie is familiar with the long-term disability insurance industry and has worked in the industry for over 11 years. (Ritchie Decl. ¶ 3). Mr.

Ritchie has been employed by Standard Insurance Company from approximately July, 1992 to the present. (Ritchie Decl. ¶4). His duties at Standard Insurance Company have included quality assurance, claim auditing, oversight of Social Security policy and procedure programs and benefit/resource team supervision (Ritchie Decl. ¶5). During his career at Standard Insurance Company Mr. Ritchie became aware of the necessity of recovering overpaid disability benefits from their insured. (Ritchie Decl. ¶6).

48. Mr. Ritchie has experienced the same problems in the industry I recognized and solved. It has been Mr. Ritchie's experience that once his company's insured receives the SSDI payment, it is challenging for the company to recover the overpaid amount. The insured may be reluctant to repay the money to an insurance company. It has also been his experience that the process of pursuing recovery of LTD overpayments requires a great deal of communication and follow up on the part of claims handling staff. It is a labor intensive and time consuming process. (Ritchie Decl. ¶7).

49. Mr. Ritchie believes there is room for improvement of overpayment collection processes within the long-term disability insurance industry. He points out as an example, that a process such as mine that comprises recovering the overpaid amounts after the insured receives the retroactive SSDI benefit but before the insured spends the money or simply refuses to repay the overpaid benefits to his or her private insurance carrier is of much value to the industry. (Ritchie Decl. ¶8).

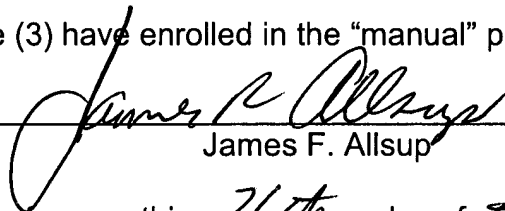
50. Mr. Ritchie has been familiar with my electronic overpayment recovery process since July 2001, when Standard Insurance Company retained Allsup, Inc. to recover overpaid benefits. Prior to that time, he knew of no other such service available to the long-term disability insurance industry. (Ritchie Decl. ¶9).

51. Once Standard Insurance Company retained Allsup, Inc. to employ its automated overpayment recovery service, Standard Insurance Company soon realized an increase in dollar amounts recovered and a decrease in time from the award of the SSDI benefit to the recovery of the overpaid amount. (Ritchie Decl. ¶10).

52. It is Mr. Ritchie's opinion that my automated overpayment recovery system helped improve his company's ability to recover overpaid monies owed to the company because it provides for pre-approved electronic recovery of the overpaid amount from a deposit account after the SSA deposits a benefit but before the insured can spend the money or decide not to refund the overpaid amount to the insurance carrier. (Ritchie Decl. ¶11).

53. It also is Mr. Ritchie's opinion that my automated overpayment recovery system met a need in the industry for increasing the amount of money recovered and decreasing the time of recovery. (Ritchie Decl. ¶12).

54. Because my system has met this long felt need in the industry, Allsup, Inc.'s overpayment recovery services, particularly the electronic overpayment recovery service, continue to grow. Presently, the number of companies that have engaged our company to perform overpayment recovery services has grown to a total of sixty-six (66) companies. It is significant to note that sixty-three (63) of these companies have chosen the electronic overpayment recovery service, while only three (3) have enrolled in the "manual" process.


James F. Allsup

Sworn and subscribed to before me this 26th day of February
2004.


Notary Public

My Commission expires: 4-30-07

